IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

Crl.MC.No. 429 of 2005()

CC.626/2004 of JUDL. MAGISTRATE OF FIRST CLASS-II, PERAMBRA

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PETITIONER/ACCUSED:

K.P.ASHRAF, S/O.AHAMMAD HAJI,
KIZHAKKE PALAYULLATHIL VEEDU,
KOKKALLUR AMSOM DESOM, KOYILANDI TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENTS/COMPLAINANT AND STATE:

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1. MEPPATT HASEENA,
D/O.KUNHAMMAD, CHERUVATH HOUSE,
MEPPAYUR AMSOM DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. DILEEP
ADV. SRI.P.K.RAMKUMAR
SMT.ANITHA RAMKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K. BASHEER, J.

CRL.M.C. NO. 429 OF 2005

Dated this the 22nd day of February, 2007

O R D E R

Petitioner is the former husband of respondent No.1/complainant. Petitioner is being prosecuted for an offence punishable under Section 498 A of the IPC. Annexure-II is the certified copy of the complaint filed by respondent No.1 before the court below. Though the parents, sister and sister-in-law of the petitioner were also implicated and arraigned as accused, it is the admitted position that all others except the petitioner have been discharged by the court below. It is contended by the petitioner that the prosecution lodged against him is manifestly unsustainable and vitiated. A brief reference to the essential facts may be necessary to consider the question whether the proceedings pending against the petitioner are liable to be quashed or not.

2. It is the admitted position that the petitioner had married respondent No.1 on September 7, 1997. Accoridng to the complainant/respondent No.1, she was taken to her matrimonial home after her marriage and occasionally she along with other family

members used to go to Madras where her former husband (petitioner) was having his business. The specific case of the complainant in Annexure-II complaint is that from the very beginning the parents, sister and sister-in-law of her former husband used to insult and ridicule her alluding that she was not beautiful enough. They openly wondered how could she be the wife of the petitioner, particularly since no dowry had been paid by her parents. It is the further case of the complainant that she had gone to her parental home for delivery and that none of the relatives of her former husband came to take her back to the matrimonial home. The father of her former husband demanded a sum of Rs. 7 lakhs towards dowry and it was informed that if the said amount was not paid she would not be taken back to the matrimonial home. The complainant's father was constrained to pay Rs. 1 lakh and it was only after payment of the said amount on December 10, 1998 that she was taken back to her matrimonial home. The complaint further alleged that harassment for more dowry contined still and her father was yet agaihn constrained to pay a further sum of Rs. 6 lakhs to the father of the petitioner on August 27, 1999.

3. It is pertinent to note that the case of the complainant is

that harassment for further payment of money towards dowry continued after August 27, 1999. As mentioned earlier, a sum of Rs. 6 lakhs was paid. The harassment continued till August 2003. The complainant was told that unless and until a further sum of Rs. 3 lakhs was paid, the marital relationship would be discontinued. A registered lawyer notice to this effect was also issued at the instance of the petitioner/accused in August 2003. Interestingly, the complainant did not choose to file any complaint against the petitioner or his relatives till August 2004 when Annexure-II complaint was filed.

4. It is admitted by the complainant that in the meanwhile the marriage between her and the petitioner was dissolved on February 8, 2004. Annexure-I is admittedly an agreement executed between the petitioner and the complainant on July 3, 2004. In the said agreement, it is mentioned that a sum of Rs. 12.50 lakhs was received by the complainant towards the statutory dues like mahr or dower, maintenance during iddat, payment of provision and maintenance etc payable under the Muslim Women (Protection of Rights on Divorce) Act, 1986.

5. I have referred to the specific averments in the complaint

rather too elaborately only to highlight the fact that there is no specific allegation of physical or mental ill treatment or harassment on a particular date or during a specified period of time. The tenor and content of the complaint appears to be that the persistent demand for more dowry continued right from the beginning of the marital relationship till August 2003, when ultimately the registered lawyer notice was issued. As mentioned earlier, Annexure-I agreement was executed on July 3, 2004. The present complaint was filed on August 23, 2004.

6. A perusal of the averments in the complaint undoubtedly shows that the complaint is only an attempt either to harass the petitioner or to make a demand for more money, as rightly contended by the petitioner. I am unable to accept the contention raised by the learned counsel for the complainant that the ingredients of the offence punishable under Section 498 A have been attracted and that the proceedings are not liable to be quashed at this stage. It is true that this Court must be circumspect and cautious to invoke the power under Section 482 to quash the proceedings pending before the Trial Court. Under normal circumstances, sufficient opportunity should be given to the parties to adduce evidence and the Trial Court

should be left to decide the case on its merits. But in appropriate cases, this Court must invoke the inherent power and jurisdiction under Section 482 to quash proceedings pending before the Lower Court, particularly, when it is apparent from the face of the complaint or the proceedings itself that it is clearly an abuse of judicial process. If miscarriage of justice is likely to occur, this Court must step in without hesitation. This case, in my view, is one, which warrants interference at the hands of this Court. I have carefully perused the averments in the complaint. The entire facts and circumstances of the case would undoubtedly show that if the proceedings are allowed to continue, it will result in miscarriage of justice. This Court should not allow any party to abuse the judicial process.

In the above circumstance, the proceedings pending against the petitioner in C.C. No.626/04 on the file of the Judicial Magistrate of First Class Court II, Perambra are quashed and the Crl.M.C. is allowed.

A.K. BASHEER, JUDGE

vps

KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006